

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

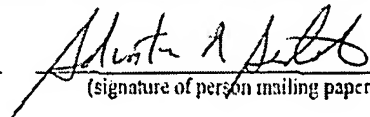
Applicants: Jeffrey R. BURY, et al.                      Docket No.    MBC-0511  
Serial No.        10/787,507                                      Examiner:    Kelechi C. EGWM  
Filing Date:     February 26, 2004                      Art Unit:      1713  
Title:                STRENGTH IMPROVEMENT ADMXTURE

MAIL STOP RCE  
COMMISSIONER FOR PATENTS  
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9-22-08  
(date)

DECLARATION OF JOSEPH A. DACZKO UNDER 37 CFR §1.132

To the Honorable Commissioner for Patents:

I, Joseph A. Daczko, hereby declare that:

1. I am a resident of City of Hiram in the State of Ohio.
2. I have been employed by the Admixture Systems Division of BASF Construction Chemicals and its corporate predecessors for over 15 years. During my employment with BASF, I have worked the in concrete admixture product research and development.
3. I am a named inventor on United States Patent No. 6,858,074 entitled "High Early Strength Cementitious Composition" (the '074 Patent).

4. The '074 Patent is assigned to Construction Research & Technology GmbH, an affiliate of BASF Construction Chemicals.

5. The '074 Patent is directed to a high early strength cementitious composition that includes a hydraulic cement and a composition of admixtures comprising a polycarboxylate dispersant, an accelerator and a retarder. The combination of polycarboxylate dispersant, accelerator and retarder results in a cementitious composition achieving certain compressive and flexural strengths within a short period of time after placement of the composition.

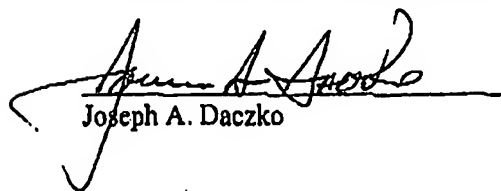
6. I understand that the presently claimed strength improvement admixture composition comprises about 5 to about 80% polycarboxylate dispersant, about 0.5 to about 40% set retarder, and about 0.5 to about 40% strength improvement additive, based on the total dry weight of the admixture composition.

7. I have reviewed the PTO's Final Office Action dated June 2, 2008 for United States Serial No. 10/787,507. I understand that the claims of United States Serial No. 10/787,507 are currently rejected in view of Table A of the '074 Patent. The Patent Examiner specifically alleges that the dosage ranges for the polycarboxylate, set accelerator and set retarder shown in Table A of the '074 Patent overlap the ranges of polycarboxylate, set retarder and strength improvement additive claimed in United States Serial No. 10/787,507.

8. The ranges for polycarboxylate, set accelerator and set retarder set forth in Table A of the '074 Patent do not specify the weight percentage of the each component of the composition of admixtures. To the contrary, the ranges set forth in Table A of the '074 Patent actually represent the "approximate solids content" of each of the commercially available admixture component, before the individual admixture components are added to the cementitious mixture.

9. The second paragraph following Table A of the '074 Patent expressly discloses "[T]he weight percentages of the components in the high early-strength composition of admixtures are preferably greater than 0% to about 2% retarder; about 5% to about 12% dispersant; and about 85% to about 95% accelerator based on solid (dry) content." It is this specific disclosure, not the disclosure of Table A, which controls the amount of dispersant, accelerator and retarder that is present in the composition of admixtures of the '074 Patent. Therefore, it is my opinion that the '074 Patent does not anticipate the currently pending claims.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United State Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Joseph A. Daczko

9-22-08  
Date